

PRINTRONIX, INC.,
Opposer,

-versus-

TRINITY MARKETING, INC., doing business under
The name and style of BLACKSTONE COMPUTER
ACCESSORIES,
Respondent-Applicant.

X-----X

IPC No. 14-2014-00125

Opposition to:

Appln. Serial No. 4-2013-500189

Date Filed: 18 January 2013

TM: PRINTRONIX

NOTICE OF DECISION

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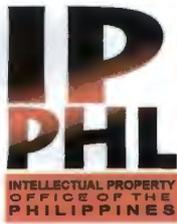
GREETINGS:

Please be informed that Decision No. 2017 - 84 dated 17 March 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 20 March 2017.

MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs



PRINTRONIX, INC.,
Opposer,

-versus-

**TRINITY MARKETING, INC., doing
business under the name and style
of Blackstone Computer Accessories,**
Respondent-Applicant.

X -----X

IPC No. 14-2014-00125
Opposition to Trademark
Application No. 4-2013-500189
Date Filed: 18 January 2013

Trademark: **"PRINTRONIX"**

Decision No. 2017- 84

DECISION

Printronix, Inc.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2013-500189. The contested application, filed by Trinity Marketing, Inc., doing business under the name and style of Blackstone Computer Accessories² ("Respondent-Applicant"), covers the mark "PRINTRONIX" for use on *"toner inks, other inks for printing under class 2"* and *"carbon paper, colored paper, fax paper, copy paper, bond paper, pad paper, photo paper, adhesive label, sticker paper, stick note pad and other paper included in class 16, clearbook, clearbook refill, file folder, plastic folder, notebook, plastic notebook cover, envelope, brown envelope, kraft bubble envelope, continous forms, ballpens, highlighters, markers, pencils, colored pencils, mechanical pencil, crayons, chalks, adhesive tapes, correction tape, correction tape refills, glue tape, white glue, eraser, paste, card case, data case, desk accessories, filing rack, cd rack, stapler, staple wire, paper clips, fasteners, roundhead fastener, glue gun, glue gun stick, gun tacker, name card holder, menu holder, thumbtacks, cutter, puncher, paper trimmer, bag sealer, tape dispenser, rulers, scissors, sharpener, stencil, master stencil, binding machine, laminating machine, arch-files, expanding file, file case, three-ring binders, document files and organizers, computer ribbons, typewriter ribbons, calculator ribbons, ink under class 16, duplicator ink, fax films, corkboard, whiteboard, blackboard"* under Classes 02 and 16, respectively, of the International Classification of Goods³.

According to the Opposer, it is the originator of "PRINTRONIX" mark, having first used the same in the Philippines as early as 1992 and elsewhere around the world since 1974. It registered the said mark in different countries all over the world. It thus contends that the Respondent-Applicant's marks should not be allowed

¹A company organized and existing under the laws of Delaware, USA with principal office at 15345 Barranca Parkway, Irvine California 92618, USA.

²A domestic corporation with business address at 632 Carvajal Street, Binondo, Manila.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks concluded in 1957.

Republic of the Philippines
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registration for being confusingly similar with its own mark and tradename. In support of its opposition, the Opposer submitted the affidavit of Rhonda Longmore-Grun, with annexes.⁴

The Respondent-Applicant filed its Answer on 22 September 2014 alleging that it filed in good faith the contested application. It avers that the Opposer did not present evidence that it registered "PRINTRONIX" in the Philippines or that the same is considered well-known by a competent authority in the country. It contends that the latter failed to show its corporate existence of juridical capacity. It also disputes the documents attached in the opposition for being mere photocopies. The Respondent-Applicant's evidence consists of the following:⁵

1. Trademark Application No. 4-2013-500189;
2. copy of the Notice of allowance;
3. printout of the E-Gazette released on 24 February 2014; and
4. affidavit of Kelvin Y. Gan.

The issue to be resolved is whether Respondent-Applicant should be allowed to register the trademark "PRINTRONIX".

The marks are clearly identical. In this regard, Section 123.1 (d) of R.A. No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides that:

"Section 123. Registrability. - 123.1. A mark cannot be registered if it:

x x x

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion; x x x"

Records reveal that the Respondent-Applicant filed the contested application on 18 January 2013. The Opposer, on the other hand, has no pending application and/or existing registration for "PRINTRONIX" in the Philippines.

The Opposer thus anchors its opposition on its ownership of and/or prior adoption of the said mark, which requires the presentation of substantial evidence to prove the same. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to

⁴Marked as Exhibits "B", inclusive.

⁵ Marked as Exhibits "1" to "4".

support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.⁶ The burden of proof rests on the Opposer.

The opposition filed and the attachments thereto show that the annexes to the affidavit of Rhonda Longmore-Grund are not the original and/or certified true copies. While the Rules and Regulations on Inter Partes Proceedings⁷ allow the submission of photocopies of the exhibits in the filing of the opposition and/or answer, the same is subject to a condition that the original and/or certified true copies thereof shall be presented and/or submitted during the Preliminary Conference. The Opposer, however, failed to appear during the scheduled Preliminary Conference on 19 May 2016. As a result, it failed to present and/or submit the original and/or certified true copies of its annexes in the affidavit.

Therefore, the statement the Rhonda Longmore-Grund's affidavit is bereft of merit and wanting of supporting evidence. In so ruling, this Adjudication Officer simply defers to the basic rule in evidence that each party must prove his affirmative allegation. The basic rule is that mere allegation is not evidence, and is not equivalent to proof.⁸ It is true that administrative and quasi-judicial bodies are not bound by the technical rules of procedure in the adjudication of cases. However, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. While the rules of evidence prevailing in the courts of law or equity are not controlling in proceedings before the IPO, the evidence presented before it must at least have a modicum of admissibility for it to be given some probative value.⁹

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2013-500189 is hereby **DISMISSED**. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 17 MAR 2017


Atty. Z'SA MAY B. SUBEJANO-PE LIM
Adjudication Officer
Bureau of Legal Affairs

⁶ Primo C. Miro vs. Marilyn Mendoza Vda. De Erederos, G.R. No. 172532, 172544-55, 20 November 2013.

⁷ Office Order No. 99, Series of 2011.

⁸ Hector C. Villanueva vs. Philippine Daily Inquirer, Inc., G.R. No. 164437, 15 May 2009.

⁹ Maritime Factors, Inc. vs. Bienvenido R. Hindang, G.R. No. 151993, 19 October 2011.